



General Assembly

Distr.: General
17 May 2017

English only

Human Rights Council

Thirty-fifth session

6-23 June 2017

Agenda item 3

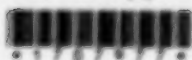
Racism, racial discrimination, xenophobia
and related forms of intolerance

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Australia: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Australia.

GE.17-07977(E)



Please recycle 



Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Australia: comments by the State*

Response to recommendations

1. The recommendation in paragraph 70(a) on legal frameworks is noted.
2. The Australian Government does not intend to ratify ILO Conventions 97 and 143 or the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
3. Australia already has strong protections in place for migrant workers which address the issues covered by the three conventions.
4. Temporary visa holders with a work right are entitled to the same basic rights and protections as Australian citizens and permanent residents under applicable workplace relations laws. Victims of abusive and fraudulent practices have access to civil mechanisms, such as the Fair Work Ombudsman, and have the ability to pursue civil and administrative remedies, including for unpaid wages and entitlements, irrespective of their nationality.
5. Many minimum workplace relations conditions are provided for under Australian law by the *Fair Work Act 2009* and related Fair Work instruments. The *Fair Work Act* applies to Australian citizens, permanent residents and temporary visa holders. It protects employees from discrimination and ensures basic rights such as freedom of association and freedom from discrimination. In addition, employees covered by state government workplace relations legislation have similar protections to the *Fair Work Act*. Protections and duties specified under workplace health and safety legislation apply to all workplace participants and do not distinguish by citizenship or residency status.
6. Australia also has a range of measures in place specifically to address instances of exploitation of foreign workers. In 2013, the *Migration Act 1958* was amended to introduce graduated tiers of sanctions to deter illegal work hire practices and sanction employers and labour suppliers that persist in non-compliant behaviour.
7. The Australian Government has a strong commitment to addressing the exploitation of vulnerable workers in Australian workplaces, including migrant workers, and has introduced a number of initiatives to improve compliance with workplace laws. Under the Protecting Vulnerable Workers Policy, the Government has committed to provide additional funding for the Fair Work Ombudsman, establish a Migrant Workers' Taskforce and to amend the *Fair Work Act 2009* to strengthen protections for vulnerable workers.
8. Australia has a comprehensive strategy to combat human trafficking, slavery and slavery-like practices. Australia also works to combat labour exploitation by cooperating with other governments in our region and internationally.

Indigenous peoples

9. The Australian Government does not intend to ratify the *Indigenous and Tribal Peoples Convention 1989* (ILO 169). The rights of Indigenous peoples are protected under

* Reproduced as received.

the treaties to which Australia is a party, (e.g. the *International Convention on the Elimination of All Forms of Racial Discrimination*) and in domestic Australian law.

10. The Government considers existing laws and policies are consistent with the Convention's objectives.

11. The Australian Government has committed to a renewed engagement and partnership with Aboriginal and Torres Strait Islander people at both the policy and programme delivery levels, in a relationship of working together. Cooperation between all levels of government, as well as with Indigenous leaders, organisations and communities, will continue.

12. The recommendation in paragraph 70(b) on legal frameworks is noted. Changes to the Australian Constitution can only occur following a successful referendum where the majority of voters in a majority of the states and territories vote yes to the proposition.

13. The Prime Minister, the Hon Malcolm Turnbull MP, and the Leader of the Opposition, the Hon Bill Shorten MP, jointly appointed a Referendum Council on 7 December 2015.

14. The Council's role is to advise them on next steps towards a successful referendum, informed by a national consultation and engagement process. It is currently running a series of First Nations Regional Dialogues across the country, to insure the voices of Aboriginal and Torres Strait Islander Peoples are heard clearly. It is also undertaking an engagement process with the broader community.

15. The Referendum Council is due to provide its Final Report to the Prime Minister and the Leader of the Opposition by 30 June 2017.

16. The recommendation in paragraph 70(c) on a legal frameworks is **noted**. The Australian Government does not propose to alter its federal model of Parliamentary supremacy by introducing a judicially enforceable human rights Act. It considers that existing mechanisms provide for the protection and promotion of human rights.

17. All Bills and disallowable legislative instruments introduced into Parliament must be accompanied by a Statement of Compatibility. A Statement of Compatibility must contain an assessment of the Bill or legislative instrument's compatibility with the rights and freedoms recognised in the seven core international human rights treaties which Australia has ratified. The Statements are considered by the Parliamentary Joint Committee on Human Rights.

18. These human rights scrutiny processes encourage early and ongoing consideration of human rights issues in policy and legislative development.

19. The recommendation in paragraph 70(a) on institutional framework is **noted**. The Australian Human Rights Commission is accredited as an 'A' status National Human Rights Institution.

20. The Australian Government is confident that the Commission is appropriately resourced to undertake its independent statutory functions. Appointments of statutory office holders under the *Australian Human Rights Commission Act 1986* are made through a merit selection process.

21. The recommendation in paragraph 70(b) on institutional framework is **noted**. Australia is committed to fulfilling its international protection obligations and contributing to the global system of international protection. All asylum seekers are assessed against the legislative framework in the *Migration Act 1958*, which gives effect to both the *1951 Convention relating to the Status of Refugees, as amended by the 1967 Protocol*, and the

complementary protection obligations arising under the *Convention Against Torture* and the *International Covenant on Civil and Political Rights*, in Australian law.

22. The recommendation in paragraph 70(c) on institutional framework is **noted**. Australian governments continue their support and commitment to the Closing the Gap agenda, and initiatives which support it.

23. The Council of Australian Governments (COAG) has agreed that governments work together and with Indigenous leaders, organisations and communities to consider an approach to refreshing the Closing the Gap agenda at the end of 2017. Justice and community safety are likely to be considered through this process.

24. The Prime Minister's annual Closing the Gap reports draw on a vast array of statistics published by the Australian Government in a number of reports including trend analysis of the key drivers of change, comparisons with non-Indigenous Australians and various geographic, age and sex disaggregations where the data allows. These include the biennial *Aboriginal and Torres Strait Islander Health Performance Framework Report*, and the *Overcoming Indigenous Disadvantage Key Indicators Report* which report on a variety of health and social indicators.

25. This data informs policy development on reducing inequality as well as supporting the higher level analysis that feature in the Prime Minister's Closing the Gap reports.

26. However, due to the comparatively small numbers of Aboriginal and Torres Strait Islander people across Australia, and the different levels of identification of Indigenous status across datasets, there are data limitations on the type of disaggregation and analysis that can be reported.

27. The Australian Government recognises the importance of high quality evaluations of the effectiveness of government programmes for Aboriginal and Torres Strait Islander people. The Government recently announced that it would provide \$10 million a year over four years to strengthen the evaluation of the Indigenous Affairs programmes.

28. The recommendation in paragraph 70(d) on institutional framework is **noted**. The Australian Government is committed to reducing Aboriginal and Torres Strait Islander offending and incarceration by tackling the underlying disadvantage that increases the likelihood of a person coming into contact with the criminal justice system. The key to this is improving education and employment outcomes and increasing community safety for Indigenous Australians. Under the Indigenous Advancement Strategy's Safety and Wellbeing programme, the Government has committed over \$1 billion over four years, to 2020, for a range of activities to improve community safety for Indigenous Australians and reduce their contact with the criminal justice system, such as prisoner through-care services, youth crime prevention and diversion activities, alcohol and drug treatment services, community mediation and family violence prevention legal services.

29. As state and territory governments are responsible for administering Australia's criminal justice systems, including police, courts and corrections, they are best placed to consider the application and implementation of particular justice practices, such as restorative justice, recruitment of Indigenous Australians into law enforcement agencies, and alternatives to detention. They are also best placed to lead the development of any specific targets to reduce Indigenous over-representation in the justice system.

30. As Royal Commissions are independent of government, it would be inappropriate to comment or respond ahead of their final reports.

31. The recommendation in paragraph 70(e) on institutional framework is **agreed**. The Australian Government values and supports diversity and is committed to ensuring that

inclusive practices are embedded into its organisational structures, including those of its law enforcement agencies.

32. The Government considers that increased workforce diversity in all its forms is fundamental to the future capabilities and effectiveness of Commonwealth law enforcement. The Government is committed to supporting its law enforcement agencies to deliver inclusive policing services, recognising that this will enable agencies to properly represent the communities they serve.

33. The Australian Federal Police's (AFP) Cultural Reform – Diversity and Inclusion Strategy 2016-2026 identifies five priority diversity groups – Aboriginal and/or Torres Strait Islander Australians; People with Disability; Culturally and Linguistically Diverse (CALD) people; Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) people; and Women. The strategy focuses on inclusive leadership and work practices that facilitate a more diverse workforce.

34. To ensure the AFP is able to achieve desired workplace and workforce outcomes, a number of measurable targets have been set within this strategy. For example, one high level outcome of the strategy is increased workforce diversity and increased representation of diversity group members in leadership roles. Longer term projects include:

- (a) Aboriginal and/or Torres Strait Islander Australians in the workforce to increase to 2.5% by the end of 2018
- (b) the number of CALD people in policing roles to be increased by maintaining a minimum of 30% CALD representation on each entry-level police recruit course
- (c) LGBTI members to reflect 10% of the total AFP workforce by the end of 2020
- (d) Women to represent 50% of the total AFP workforce by the end of 2026
- (e) Women to comprise a minimum of 50% of applicants considered as part of all external recruitment processes, and
- (f) an overall increase of 50% in the number of women in leadership positions by the end of 2019.

35. The AFP also invests in a number of training programs focused on diversity. For example, all new employees, including contractors, currently complete induction training on diversity, cultural awareness and unconscious bias prior to entering the workforce. There is an additional Cultural Awareness package delivered to all uniform officers which aims to raise awareness and understanding of the historical and contemporary issues experienced by Aboriginal and/or Torres Strait Islander Australians.

36. The AFP is currently in the process of upgrading IT platforms to include the new online training developed by the Australian Institute of Aboriginal and Torres Strait Islander Studies. AFP Workforce Diversity has also recently commenced refresher training on Aboriginal and/or Torres Strait Islanders Culture training delivered to all community policing, operational response teams.

37. The recommendation in paragraph 70(f) on institutional framework is **noted** - The Australian Government works closely with states and territories to develop and implement national policies and initiatives. Most notably, all Australian governments have committed to work together to close the gap on Indigenous disadvantage by working to meet a number of targets in health, education and employment.

38. There is anti-discrimination legislation in place at both the Federal and State/Territory making racial discrimination unlawful. These different pieces of legislation operate concurrently to ensure comprehensive protection against racial discrimination.

39. The Government is contributing to work combating racism within the community through the National Anti-Racism Strategy. The strategy aims to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.
40. The Strategy is a partnership between government (DSS, AGD and PM&C), the Australian Human Rights Commission and non-government organisations.
41. The Australian Human Rights Commission leads the strategy through the 'Racism. It Stops With Me' public awareness campaign.
42. The recommendation in paragraph 70(g) on institutional framework is **noted**. The Government provides funding for numerous community-service organisations across a range of grants programs. Government departments make funding decisions without reference to an organisation's history of advocacy for or against Government policies. Grant agreements do not include 'gag clauses' and under the *Not-for-profit Sector Freedom to Advocate Act 2013* funded organisations are free to advocate on behalf of their sector, clients or other member organisations (as is the case for peak bodies).
43. The Government also acknowledges that funding certainty is a critical issue for community organisations and that longer term grant agreements can provide better value for money for Government and help provide a framework for consistent, stable service delivery. The Government aims to offer longer term grant agreements, where appropriate. However, longer term grants agreements are not suitable in all circumstances and need to be implemented in conjunction with performance monitoring and management arrangements to ensure grant activities are proceeding as planned and grant money is being appropriately spent.
44. Funding is provided in line with the Commonwealth Grants Rules and Guidelines (CGRGs). The CGRGs state that competitive merit-based selections processes should be used to allocate grants funding and promotes their use to achieve better outcomes and value for money. Conducting competitive selection processes provides opportunities for new organisations to enter the market and can support implementation of new and innovative service delivery models. Merit-based competitive funding rounds provide a transparent and reliable method of selecting successful applicants, with applications being ranked on their performance against published assessment criteria.
45. The recommendation in paragraph 70(a) on hate-speech is **noted** - The Australian Government has no tolerance for racism and there is no place for hate speech in Australia.
46. Last year, the Prime Minister and the Leader of the Opposition together moved that Parliament:
- (a) Reaffirm its commitment to the right of all Australians to enjoy equal rights and be treated with equal respect regardless of race, colour, creed or origin;
 - (b) Reaffirm its commitment to maintaining an immigration policy wholly non-discriminatory on grounds of race, colour, creed or origin;
 - (c) Reaffirm its commitment to the process of reconciliation with Aboriginal and Torres Strait Islander people, in the context of redressing their profound social and economic disadvantage;
 - (d) Reaffirm its commitment to maintaining Australia as a culturally diverse, tolerant and open society, united by an overriding commitment to our nation, and its democratic institutions and values; and
 - (e) Denounce racial intolerance in any form as incompatible with the kind of society Australia is and wants to be.

47. In March 2017, the government launched its new multicultural policy statement, *Multicultural Australia: united, strong, successful*, reaffirming its commitment to multicultural Australia. As well as setting priorities and strategic directions for the coming years, the statement also makes it clear that racism and discrimination undermine Australia's social cohesion, community harmony and economic prosperity.

48. The recommendation in paragraph 70(b) on hate speech is **agreed**. Australia is a proud multicultural society. The Australian Government values freedom of speech and recognises the enormous benefits multiculturalism has delivered to our country. All Australians have the right to live free from fear of violence and racial discrimination, and the Government condemns racism and anybody who seeks to demonise somebody because of their race.

49. The Government is contributing to work combating racism within the community through the National Anti-Racism Strategy. The Strategy aims to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.

50. The Strategy is a partnership between the Government, the Australian Human Rights Commission and non-government organisations.

51. The Australian Human Rights Commission leads the Strategy through the 'Racism. It Stops With Me' public awareness campaign.

52. In March 2017, the government launched its new multicultural policy statement, *'Multicultural Australia: united, strong, successful'*, reaffirming its commitment to multicultural Australia. As well as setting priorities and strategic directions for the coming years, the statement also makes it clear that racism and discrimination undermine Australia's social cohesion, community harmony and economic prosperity. Annual Harmony Day celebrations provide opportunities for communities and groups to come together.

53. The recommendation in paragraph 70(c) on hate speech is **noted**. Australia is committed to supporting a media sector that treats all people with dignity and respect and that does not discriminate against individuals or groups. The media in Australia enjoys a high degree of freedom, recognising that a free, diverse and accountable news media is an essential part of any healthy democracy. Australian media predominately operates under self-regulatory arrangements. The framework they are subject to depends on the platform through which they operate. Codes of conduct exist under a range of bodies and legislation, including: Australian Press Council (APC); Media Entertainment and Arts Alliance, *Broadcasting Services Act 1992* (Cth), the Australian Communications and Media Authority (ACMA); the Commercial Television Industry Code of Practice.

54. The recommendation in paragraph 70(d) on hate-speech is **noted**. The Australian Government is committed to promoting the rule of law and the rights and protections we enjoy as a democratic nation. Of these, our right to free speech and free expression is one of the most highly valued and fiercely protected.

55. The Government works closely with the major social media sites and communicates the expectation that all sites have terms of use which sufficiently prohibit harmful material, as well as a complaints scheme for reporting harmful material.

56. The relevant legislative framework is referred to informally as 'the Online Content Scheme' (the Scheme), and comprises Schedules 5 and 7 to the *Broadcasting Services Act 1992* (Cth) (BSA), the Classification (Publications, Films and Computer Games) Act 1995 (Cth), the National Classification Code 2005 (Cth), and relevant guidelines for the classification of films and computer games.

57. The co-regulatory aspects of the Online Content Scheme work effectively to ensure that Australia is no 'safe harbour' for offensive or illegally hosted material likely to offend reasonable adults.

58. The recommendation in paragraph 70(e) on hate speech is **noted**. Australia is a proud multicultural society. The Australian Government values freedom of speech and recognises the enormous benefits multiculturalism has delivered to our country.

59. On 31 March 2017, the Australian Parliament passed amendments to the *Australian Human Rights Commission Act 1986* to reform the complaint-handling procedures of the Australian Human Rights Commission. These amendments adopt the key recommendations of the Parliamentary Joint Committee on Human Rights' inquiry, *Freedom of Speech in Australia*, which examined the Commission's ability to appropriately address unmeritorious complaints. The amendments ensure that unmeritorious complaints are discouraged or dismissed and require the Commission to notify parties of a complaint against them and resolve complaints in a timely manner.

60. The Government considers these important changes to the complaints procedures strengthen the Commission's ability to effectively resolve complaints of unlawful discrimination and ensure that all complaints to the Commission are handled fairly and transparently for every party involved.

61. The Parliament has not passed any amendments in relation to section 18C of the *Racial Discrimination Act 1975*. Any future changes to section 18C are a matter for the Australian Parliament.

62. The recommendation in paragraph 71(a) is **noted**. This recommendation is for employers, rather than the Government to implement.

63. The *Fair Work Act 2009* includes protections for employees from discrimination on the basis of race; colour; sex; sexual preference; age; physical or mental disability; marital status; family or carer's responsibilities; pregnancy; religion; political opinion; national extraction or social origin. There are also protections against discrimination in other Australian Government legislation, such as the *Racial Discrimination Act 1975*.

64. The recommendation in paragraph 71(b) is noted. In March 2017, the Australian Government launched its new multicultural policy statement, 'Multicultural Australia: united, strong, successful', reaffirming its commitment to multicultural Australia and acknowledging the important contributions of generations of migrants to Australia's economic and social prosperity. The statement is on the Department of Social Services' website at <https://www.dss.gov.au/settlement-and-multicultural-affairs>.
